

Message Text

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ACTION L-03

INFO OCT-01 EUR-25 ISO-00 DODE-00 INR-10 CCO-00 CIAE-00

OTPE-00 EB-11 FCC-03 NSAE-00 OC-06 RSC-01 COME-00

USPS-02 SS-20 NSC-10 DRC-01 /093 W

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P 111402Z FEB 74

FM AMEMBASSY BONN

TO SECSTATE WASHDC PRIORITY 0344

C O N F I D E N T I A L SECTION 01 OF 02 BONN 02212

E.O. 11652 GDS

TAGS: PINS, PINR, GW, US

SUBJECT: FRG-PROPOSED AMENDMENT TO L968 FEDERAL LAW
ON RESTRICTION OF LETTER, MAIL AND COMMUNICATIONS
SECURITY

REF: STATE 25856

1. EMBASSY NOTE DELIVERED TO FRG FOREIGN OFFICE FEB. 8.
ON BASIS OF SOMEWHAT MORE DEMANDING UK NOTE (COPY WILL
BE POUCHED TO EUR/CE UPON RECEIPT) FOREIGN OFFICE REP.
(RUMPF) WONDERED WHETHER US AND UK REQUIRED ORAL OR
WRITTEN ASSURANCES CONCERNING THEIR UNDERSTANDINGS AND
ASSUMPTIONS, AND WHETHER CABINET SUBMISSION SHOULD NOT
BE POSTPONED. HE HAD EARLIER POINTED OUT THAT ONLY AS
A RESULT OF FOREIGN OFFICE INSISTENCE VIS-A-VIS
INTERIOR MINISTRY HAD ALLIES BEEN CONSULTED AT ALL.
EMBASSY REP INDICATED US NOTE DRAFTED SO AS NOT TO
REQUIRE ANY ASSURANCES, SETTING OUT HOW WE EXPECTED
AMENDED LAW TO OPERATE IN INDIVIDUAL CASES, AND THAT WE
ARE RELUCTANT TO GET INTO DIALOGUE WITH FRG MINISTRIES
OVER DETAILED POINTS IN ADVANCE OF INDIVIDUAL CASES AND
THEREBY TO BECOME RESPONSIBLE FOR DELAY IN ANNOUNCED
CABINET CONSIDERATION. RUMPF WONDERED IF INDIVIDUAL
UNDERSTANDINGS AND ASSUMPTIONS ACCEPTED IN
SILENCE BY FRG WOULD BE SEEN TO AMOUNT TO FRG
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ACQUIESCENCE IN ALLIED UNDERSTANDINGS AND ASSUMPTIONS.

EMBASSY REP REPLIED WE ACCEPTED POSSIBILITY THAT PARLIAMENTARY COMMISSION, WHOSE VIEWS IN INDIVIDUAL CASES ARE AND WILL CONTINUE TO BE DECISIVE, MAY NOT ALWAYS ULTIMATELY AGREE WITH REQUESTING ALLIED AUTHORITIES. FOR THIS REASON, FOR EXAMPLE, WE HAD NOT IN OUR NOTE CONDITIONED NOTIFICATION ON US CONSENT. (UK NOTE REQUIRED UK CONSENT)

2. UK EMBASSY SHARES OUR RELUCTANCE TO ENTER INTO DIALOGUE DURING WHICH IMPATIENT INTERIOR MINISTRY COULD WELL QUESTION LEGAL BASIS FOR ALLIES TO INSIST ON AN INTERPRETATION OF GERMAN LAW NOT REQUIRED BY RESPECTIVE ADMINISTRATIVE AGREEMENT. EMBASSY WOULD PREFER THAT OUR UNDERSTANDINGS AND ASSUMPTIONS IN OUR OWN LANGUAGE REMAIN ON THE RECORD UNCHANGED AND WITHOUT FURTHER DISCUSSION.

3. EMBASSY NOTE TEXT FOLLOWS:

THE EMBASSY OF THE UNITED STATES OF AMERICA ACKNOWLEDGES THE RECEIPT OF NOTE NUMBER 514-554.57/12 FROM THE AUSWAERTIGES AMT DATED NOVEMBER 19, 1973, CONCERNING THE DRAFT OF A LAW TO AMEND THE "GESETZ ZUR BESCHRAENKUNG DES BRIEF-, POST- UND FERNMELDEGEHEIMNISSES VOM 13 AUGUST 1968 AND WISHES TO EXPRESS ITS APPRECIATION FOR THE EXTENSIVE EXPLANATION OF THE PROVISIONS AND PURPOSE OF THIS DRAFT LAW.

BEARING IN MIND THE CIRCUMSTANCES REFERRED TO IN THE PREAMBLE TO THE ADMINISTRATIVE AGREEMENT OF OCTOBER 31, 1968, THE EMBASSY WISHES TO PLACE ON THE RECORD THE EXPECTATION OF THE COMPETENT UNITED STATES AUTHORITIES THAT COOPERATION BETWEEN THEM AND THE GERMAN AUTHORITIES IN MATTERS COVERED BY THE ADMINISTRATIVE AGREEMENT WILL CONTINUE TO BE GOVERNED BY THAT AGREEMENT.

THE COMPETENT UNITED STATES AUTHORITIES HAVE STUDIED THE CHANGES THAT WOULD BE EFFECTED BY THE ENACTMENT OF THE ABOVE-MENTIONED LAW, AND WHILE THE DRAFT LAW HAS BEEN FOUND GENERALLY ACCEPTABLE, THE EMBASSY WISHES TO

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MAKE THE FOLLOWING OBSERVATIONS AND EXPLANATIONS:

1. ITEM 6 OF THE GESETZ. THE CONDITION THAT BEFORE NOTIFICATION IS TO BE GIVEN ENDANGERING ("GEFAEHRDUNG") CAN BE EXCLUDED IS UNDERSTOOD TO REQUIRE A HIGH DEGREE OF CERTAINTY THAT NO ENDANGERING WILL RESULT FROM SUCH NOTIFICATION. HOWEVER, IT HAS BEEN NOTED THAT THE DRAFT BEGRUENDUNG, RELYING ON THE DECISION OF THE FEDERAL CONSTITUTIONAL COURT, IN DESCRIBING ON PAGES 1

AND 8 THE PURPOSE AND EFFECT OF THE DRAFT LAW LANGUAGE
"GEFAEHRDUNG DES ZWECKES DER BESCHRAENKUNG", STATES

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ACTION L-03

INFO OCT-01 EUR-25 ISO-00 DODE-00 INR-10 CCO-00 CIAE-00

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FM AMEMBASSY BONN

TO SECSTATE WASHDC PRIORITY 0345

C O N F I D E N T I A L SECTION 02 OF 02 BONN 02212

PRECONDITION, BE EXCLUDED BEFORE NOTIFICATION BECOMES
A REQUIREMENT. THE EMBASSY EXPECTS THAT IN THE
ADMINISTRATION BY THE COMPETENT FEDERAL AUTHORITIES OF
THE 1968 LAW AS IT WOULD BE AMENDED, THE VIEWS
EXPRESSED TO THE GERMAN AUTHORITIES BY THE UNITED
STATES AUTHORITIES ON THE POSSIBLE RESULTS OF NOTIFI-
CATION WILL BE GIVEN FULL CONSIDERATION AND THAT IF
EITHER OF THE TWO ABOVE-MENTIONED RESULTS OF NOTICE
SHOULD BE POSSIBLE, NO NOTIFICATION WILL BE GIVEN.

2. ITEM 6 OF THE GESETZ. THE ABSENCE OF OBJECTION TO
THE NEW PROVISION OF LEGAL RECOURSE ("RECHTSWEG") TO
A PERSON AFFECTED IS BASED ON OUR UNDERSTANDING THAT
SUCH LEGAL RECOURSE WILL BE AVAILABLE ONLY WITH RESPECT
TO A MEASURE ("BESCHRAENKUNG") THAT HAS ALREADY TAKEN
PLACE AND OF WHICH THE AFFECTED PERSON HAS BEEN
NOTIFIED AFTER ITS TERMINATION. AS WE UNDERSTAND IT,
THE EXERCISE OF THIS LIMITED RIGHT COULD NOT OPERATE TO
EMPOWER SUCH A PERSON TO SEEK OR OBTAIN AN ADMINISTRA-
TIVE OR JUDICIAL BAR TO FUTURE MEASURES, AND NO AWARD
OF COMPENSATION THROUGH RESORT TO LEGAL RECOURSES
COULD IN ANY WAY DEVOLVE UPON ANY AUTHORITIES OF THE

UNITED STATES. IT IS ASSUMED IN ANY EVENT THAT NO COURT OR ADMINISTRATIVE ACTION COULD LEAD TO RESULTS THAT WOULD BE INCONSISTENT WITH THE TERMS OF THE ADMINISTRATIVE AGREEMENT OF OCTOBER 31, 1968, AND THAT
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MATTERS CONCERNING THE SECURITY OF UNITED STATES FORCES WOULD NOT BE DISCUSSED DURING ANY SUCH ACTIONS.

3. ITEM 3 OF THE GESETZ. THE EMBASSY SUGGESTS THE INCLUSION OF PARAGRAPH 87 OF THE FEDERAL PENAL CODE IN THE ENUMERATION OF PARAGRAPHS OF THE PENAL CODE CONTAINED WITHIN THE PARENTHESES IN ARTICLE 1, SECTION 2, PARAGRAPH 1, ITEM 5. THE PURPOSE OF THE PROPOSED ADDITION OF PARAGRAPH 87 IN THE ABOVE ENUMERATION IS TO PROVIDE FOR PROTECTION AGAINST PLANNED ACTS OF SABOTAGE AGAINST THE ARMED FORCES OF THE UNITED STATES STATIONED IN THE FEDERAL REPUBLIC BY ELEMENTS CONTROLLED FROM ABROAD. THE EMBASSY WISHES TO EXPRESS THE SATISFACTION OF THE UNITED STATES AUTHORITIES THAT THE DRAFT LAW WILL CORRECT THE INADVERTENT OMISSION OF PARAGRAPH 89 OF THE FEDERAL PENAL CODE FROM THE ENUMERATION OF ARTICLE 1, SECTION 2, PARAGRAPH 1, ITEM 5 OF THE LAW AS IT WAS ENACTED IN 1968.

THE EMBASSY REALIZES THAT IN THE COURSE OF PARLIAMEN- TARY CONSIDERATION THE DRAFT LAW MAY UNDERGO SOME CHANGES AND REQUESTS TO BE CONSULTED ON ANY SUBSTANTIVE CHANGES THAT APPEAR LIKELY OF ADOPTION SO THAT IT WILL HAVE THE OPPORTUNITY TO ADVISE THE AUSWAERTIGES AMT OF THE VIEWS OF THE UNITED STATES AUTHORITIES WITH RESPECT TO SUCH CHANGES. END TEXT.

HILLENBRAND

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